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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4327 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL                      Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made tJJJJJ : NO

[illegible]

5. Whether it is to be circulated to the Civil Judge? : NO  
Nos. 1 to 5 No

ISMAIL FAKIR AKUDI

Versus

ASSISTANT COLLECTOR

Appearance:

MR RN SHAH for Petitioner

MR LR POOJARI, AGP.for Respondent

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 07/03/2000

ORAL JUDGEMENT

The petitioner is the owner of land bearing block no.1181 admeasuring H-44 RA-52 Sq.Mtrs. of village Khund, Taluka Chikhli. The petitioner was a deemed

purchaser of the said land under section 32G of the Bombay Tenancy and Agricultural Lands Act, and as such it was a restricted tenure as provided in Section 43 of the Tenancy Act. The petitioner wanted the land to be converted into old tenure land as he wanted to use the land for constructing the residential house. He therefore made an application to the Deputy Collector, Navsari on 5.11.1984. He also paid Rs.15,339/as premium to the Government for the change of use. The Deputy Collector, Navsari by his order dated 2.9.1985 granted permission to use the land for NA purpose i.e. for residential house subject to certain conditions. On 9.9.1987 the Assistant Collector addressed a communication to the petitioner stating that though under condition no. 2 of the order granting permission the petitioner was to make NA use of the land for his own purpose, he had sold a part of the land to a firm "Amrutlal & Co". who had obtained NA permission. Thus, the petitioner had committed the breach of the said condition. Hence as provided in condition no.4 the permission automatically stood cancelled. It was also alleged that the petitioner had not obtained prior permission of the Collector for sale as required by condition no.1 and the permission also stood cancelled for the said breach.

Being aggrieved by the said communication cancelling the permission the petitioner filed revision application before the Gujarat Revenue Tribunal. However, the Tribunal held that the Deputy Collector had not granted permission under section 43 of the Act and the order cancelling permission was also not under the said section and hence the Tribunal had no jurisdiction to entertain the revision under section 76 of the Act. The Tribunal therefore ordered the revision memo to be returned for presentation to the proper forum.

The petitioner being aggrieved by the said orders of the Deputy Collector cancelling the permission and the order of the Tribunal refusing to entertain the revision application has filed this petition under Article 227 of the Constitution of India.

Mr.R.N.Shah, learned Counsel for the petitioner contended that the Deputy Collector had granted permission under section 43 of the Act, and his order cancelling the permission was under the said Act, and therefore, the revision application filed by the petitioner before the Tribunal was maintainable. It is true that the order of the Deputy Collector granting permission does refer to the fact that the land is under

restricted tenure under section 43 of the Act but at the same time it is not clear under which provision of law he had passed the order granting permission. However, in my opinion, it is not necessary to go into the said question because the petitioner has also challenged the order of the Assistant Collector dated 9.9.1987 cancelling the permission on the ground that it was passed without issuing any notice and without giving any opportunity of being heard to the petitioner. The averment made in para 2 of the petition that the order was made without issuing show cause notice or without giving any opportunity of being heard has remained uncontroverted. Even the order of the Deputy Collector also does not indicate that any show cause notice was issued before permission was cancelled by the said order. Thus, the order has been passed in breach of natural justice and is liable to be quashed and set aside on that ground.

The petition is therefore allowed. The impugned order dated 9.9.1987 passed by the Assistant Collector, Navsari (Annexure 'B') is quashed and set aside. It will be open to the competent authority to pass a fresh order after issuing show cause notice and giving him an opportunity of being heard to the petitioner. Rule made absolute accordingly. No order as to costs.

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m.m.bhatt